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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 165

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY,

Appellant,

vs.

STATE OF MINNESOTA, ORDER OF RAILWAY CONDUCTORS, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, BROTHERHOOD OF RAILROAD TRAINMEN, BROTHERHOOD OF RAILROAD AND STEAMSHIP CLERKS, THE JOINT LEGISLATIVE BOARD and THE RANGE MUNICIPALITIES AND CIVIC ASSOCIATION,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

APPELLANT'S REPLY TO STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS

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This reply will be confined to a single question. Other points raised by Appellees in their Statement Opposing Jurisdiction and Motion to Dismiss are either covered in

Appellant's Statement as to Jurisdiction or are believed not to be material.

We would refrain therefore from response were it not that Appellees apparently contend that denial of due process in the hearing before the Commission would become immaterial in the light of Appellant's opportunity to present additional evidence before the District Court upon appeal from the Commission.

This argument lacks validity. The Supreme Court of Minnesota has made it clear in many cases, including the instant case and those therein cited, that under the existing statutes of that State a hearing before the District Court on appeal from an order of the Railroad and Warehouse Commission, even though the District Court may receive additional evidence, is a judicial review leading only to affirmance or vacation of the order below, and not a superseding legislative and administrative determination. Appellees apparently recognize this. (Motion pages 11-14)

The Supreme Court of Minnesota has stated recently:

> "The power to investigate and regulate railroad rates involves a legislative and administrative function which is exclusively vested by statute in the Railroad and Warehouse Commission. Section 216.16 and 216.19. The legislative power of rate making may in no event be exercised by the District Court. While that Court upon appeal may take evidence de novo to determine if, in the light thereof, the Commission's order was illegal or unreasonable at the time of its making, it cannot try the matter in controversy de novo and substitute its own findings for those of the Commission. * * *" *State* v. *Northern Pacific Ry. Co.*, 229 Minn. 312, 319; 39 NW 2nd 752, 756-7 (1949).

It would seem to be axiomatic, therefore, that denial of due process before the Commission would vitiate the entire

proceeding and order of the Commission and render them a nullity.

Respectfully submitted,

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